

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Application of Open Network  
Architecture and Nondiscrimination  
Safeguards to GTE Corporation

CC Docket No. 92-256

COMMENTS

INDEPENDENT TELECOMMUNICATIONS,  
NETWORK, INC.  
Gilbert/Robinson Plaza  
Two Brush Creek Blvd., Ste. 400  
P. O. Box 30210  
Kansas City, MO 64112

John F. Dodd  
Brad I. Pearson  
SMITH, GILL, FISHER & BUTTS,  
a Professional Corporation  
One Kansas City Place  
1200 Main Street, 35th Floor  
Kansas City, MO 64105-2152  
(816) 474-7400

Its Attorneys

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## SUMMARY

As a provider of enhanced and other SS7 network services to telephone companies, ITN is vitally interested in the proper application of the ONA safeguards to carriers such as GTE.

ITN believes that GTE is in fact in a better position today than the BOCs to discriminate against enhanced service providers because of the nationwide character of GTE's facilities and operations, GTE's recent and ongoing efforts to enter the interexchange business, and the absence of competition from competitive access providers due to GTE's rural operations.

GTE's recent efforts to transfer its SS7 interexchange business to GTE INS, following the Department of Justice's December, 1992 instruction to GTE to cease the marketing of these SS7 interexchange services through the GTOCs, clearly demonstrates GTE's intention to attempt to provide interexchange services through an interexchange subsidiary not bound by the structural separation requirements which were applicable to Sprint. This increases the importance of application of the ONA and nondiscrimination safeguards to GTE.

In addition, the nationwide scope of GTE's operations facilitates in many cases anticompetitive and discriminatory behavior. GTE's ability to use its regionally dispersed SS7 facilities to act as an SS7 "hub" provider enhances GTE's

ability to act as a platform for the delivery of enhanced services. Moreover, GTE's local operations have a greater tolerance for cross subsidization because GTE is not vulnerable to competitive pressures from competitive access providers, due to GTE's more rural operations.

In ITN's view, these factors combined with the even greater size and scope of GTE's operations following its acquisition of Contel, strongly favor application to GTE of the same ONA and nondiscrimination safeguards applicable to the BOCs.

ITN also believes that requiring GTE to submit its ONA justification 60 days before filing its ONA tariffs will better facilitate critical review and analysis of the ONA proposals. ITN further believes that requiring GTE to implement nondiscrimination methods already approved for use by one of the BOCs is an appropriate means of expediting the implementation of these safeguards.

Finally, whether ONA is merely a technical framework, or a true gateway to enhanced competition and expansion of enhanced services, will in ITN's view depend principally on the Commission's rulemaking and decisions with respect to transport and the unbundling of the transport elements which will provide access to basic network services.

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CC Docket No. 92-256

To: The Commission

COMMENTS

Independent Telecommunications Network, Inc. ("ITN"),  
by its attorneys, hereby respectfully submits its Comments on  
the Notice of Proposed Rulemaking issued on December 2, 1992.<sup>1</sup>

I. BACKGROUND.

The Open Network Architecture ("ONA") and nondiscrimination  
safeguards governing the Bell Operating Companies' ("BOCs")  
participation in the enhanced services market are designed to  
create increased opportunities for all enhanced service providers  
("ESPs") by making available to all ESPs unbundled network  
services and network information to insure that independent ESPs  
receive timely access to network services and important technical

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<sup>1</sup> Notice of Proposed Rulemaking, In the Matter of  
Application of Open Network Architecture and Nondiscrimination  
Safeguards to GTE Corp., CC Docket No. 92-256, released December  
2, 1992 ("NPR").

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information regarding network services.<sup>2</sup> ONA is designed to ensure access and serve as a safeguard against discrimination.

In its Computer III proceedings, the Commission did not impose ONA requirements and nondiscrimination safeguards (to which the BOCs are subject) on GTE's participation in the enhanced services market. In spite of GTE's similarity to the BOCs by any number of measures, the Commission concluded that the cost of imposing these safeguards on GTE at that time outweighed the benefits. Because of the GTOCs' relative geographical dispersement in noncontiguous areas, the Commission concluded, GTE could not exercise monopoly control over large regions in the same manner as the BOCs. The Commission reserved the right to revisit this issue following implementation of ONA by the BOCs.<sup>3</sup>

In the NPR, the Commission concludes that "the public interest will be served by applying to GTE the same ONA regulatory framework that governs the BOCs' participation in the enhanced services market."<sup>4</sup> The Commission bases its conclusion on the fact that ONA permits ESPs and others to receive basic network functions, permits the use of the network, and increases the availability of, and competition in the provision of, enhanced services.<sup>5</sup> ONA promotes both

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<sup>2</sup> Id. at 2-3.

<sup>3</sup> Id. at 5,6.

<sup>4</sup> Id. at 7.

<sup>5</sup> Id.

nondiscrimination and improvement in the efficiency and availability of enhanced services.

Because GTE has significantly expanded the scope of its operations with its merger with Contel, the Commission concludes that the benefits of applying ONA to GTE have been significantly increased. More customers will be benefitted and GTE is in an even stronger position financially to sustain any increased costs associated with the implementation of ONA. According to the Commission, the increased scope of GTE's operations have enhanced "its ability and incentive to discriminate against competitors."<sup>6</sup> In addition, the Commission notes that the costs of compliance for GTE have been reduced considerably by virtue of the BOCs experience with, and the Commission's refinement of, the ONA and nondiscrimination safeguards.

Significantly, the Commission reaches these tentative conclusions in spite of GTE's assertions that following its merger with Contel, GTE's operations are even more rural and geographically dispersed.<sup>7</sup>

In addition, because of the size and strength of GTE's operations, the Commission indicates that it has tentatively concluded that GTE should be subject to ONA nondiscrimination safeguards no less stringent than those applicable to the BOCs.

The Commission has also proposed streamlining implementation of GTE's initial ONA offering through two alternative approaches:

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<sup>6</sup> NPR at 7,8.

<sup>7</sup> NPR at 9.

(i) requiring GTE to submit its ONA tariffs and justification of initial ONA services simultaneously, or (ii) requiring GTE to submit its initial ONA justification 60 days before filing of its ONA tariffs.

## **II. INTEREST OF ITN.**

ITN is engaged in the business of providing enhanced and other SS7 network services to telephone companies.<sup>8</sup> SS7 technology allows call signaling and routing to be accomplished independently of the voice circuits, which enhances the speed and efficiency of the telecommunications voice network.

ITN is owned by a cross-section of companies in the independent telephone industry and is operated as a wholly separate, stand-alone company.

SS7 in particular supports "network services by providing more efficient use of network resources, improved network performance and security, and the ability to offer additional network services. [SS7] is also the critical infrastructure for the implementation of ISDN and IN services."<sup>9</sup> SS7 is a technology which enables and facilitates the improved provision of enhanced services by allowing faster connection time,

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<sup>8</sup> These services include Alternate Billing Services, LIDB Access Services, SS7 hubbing or "Query Transport Service", Trunk Signaling Service, Detail Message Accounting, Customized Fraud Control Service, and 800 Database Access Service.

<sup>9</sup> Amendments to the Open Network Architecture Plan of the NYNEX Telephone Companies, CC Docket No. 88-2, filed April 15, 1991, at 23.

increased service point communication capabilities, and increased call related information capacity.

Therefore, SS7 will play a pivotal role in the development of enhanced services. The proper administration and implementation of ONA with respect to SS7 network capabilities will play a central role in the development and availability of a wide variety of SS7-based enhanced services.

**III. BECAUSE OF THE NATIONWIDE CHARACTER OF GTE'S FACILITIES AND OPERATIONS, GTE'S RECENT AND ONGOING EFFORTS TO ENTER THE INTEREXCHANGE BUSINESS, AND THE ABSENCE OF COMPETITION FROM COMPETITIVE ACCESS PROVIDERS DUE TO GTE'S RURAL OPERATIONS, GTE IS IN FACT IN A BETTER POSITION TODAY THAN THE BOCs TO DISCRIMINATE AGAINST ENHANCED SERVICE PROVIDERS.**

The Commission notes its reasoning in Computer III that the geographical dispersement of GTE's service areas over a large number of noncontiguous areas prevented GTE from exercising monopoly control in large regions of the country.<sup>10</sup> The fact that GTE's operations are geographically dispersed was also a factor in the District Court for the District of Columbia's approval in 1984 of the GTE Consent Decree, which applied less stringent structural safeguards and market prohibitions than those applied to the BOCs.<sup>11</sup>

The District Court for the District of Columbia in 1984 noted that while GTE more or less matched some of the BOCs in terms of the size and scope of operations, GTE's operations were

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<sup>10</sup> Phase II Order, 2 FCC Rcd. at 3101-02.

<sup>11</sup> United States v. GTE Corp., 603 F.Supp. 730, 740 (D.D.C. 1984) (hereinafter "Consent Decree Opinion").

widely scattered.<sup>12</sup> The Court also noted that the GTOCs did not have the intercity and interLATA facilities of the type then controlled by the BOCs. Noting that the "issue is a close one", the Court approved the lesser restrictions on the GTOCs "only because of the strictness and firmness of the Decree's injunctive and separate subsidiary provisions".<sup>13</sup>

Today, however, the GTOCs have internal signalling networks which span the entire United States, interconnecting GTE's operations in 40 states and spanning 139 LATAs. Through the addition of Contel's operations, GTE added \$3.4 billion in total revenues, 2.7 million access lines and 1,700 local exchanges.<sup>14</sup> The GTOCs' operations are no longer, by any remote stretch of the imagination, "primitive" rural operations lacking in interLATA facilities.

Other important factors in analyzing this issue have also changed dramatically in recent years. The fact that GTE's operations are nationwide in scope now militates in favor of greater regulatory oversight of GTE for a number of significant reasons. The nature of the technology utilized today is such that being dispersed geographically facilitates in many cases anticompetitive and discriminatory behavior. For example, with respect to SS7 services, the ability to act as a "hub" provider, with facilities (i.e., signal transfer points) in every region

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<sup>12</sup> Id. at 734.

<sup>13</sup> Id. at 737.

<sup>14</sup> NPR at 7.

of the country makes a carrier's services extremely attractive to an enhanced services provider who could utilize this SS7 technology as a platform for delivery of services to consumers on a nationwide basis.

In fact, GTE has in recent years undertaken to enter into the interLATA SS7 services marketplace through the GTOCs, and, more recently, through the development of a new GTE subsidiary, GTE INS. In June of 1990, the GTOCs began providing interexchange SS7 signaling services. On December 4, 1992, the Department of Justice instructed GTE that these services were being provided in violation of the GTE Consent Decree, ordered GTE to cease any further marketing of these interexchange services, and instructed GTE to submit to the Department a plan for effecting compliance with its Consent Decree within 14 days.<sup>15</sup>

In recent weeks, ITN understands that GTE has begun transferring its SS7 interexchange services to GTE INS, a new GTE subsidiary formed for this purpose. While ITN believes that this transfer of interexchange services is not permitted under the GTE Consent Decree,<sup>16</sup> apparently GTE's intention is to provide these interexchange services through whatever means are

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<sup>15</sup> December 4, 1992 letter from Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, United States Department of Justice, to Richard M. Cahill, Vice President and General Counsel GTE Telephone Operations.

<sup>16</sup> See United States v. GTE Corp., 1985-1, Trade Cas. (CCH) ¶66,355 (D.D.C. December 21, 1984) ("Consent Decree"), § V and VI, at 64,775, 64776.

available. Significantly, GTE's new interexchange carrier subsidiary is not subject to the structural separation requirements applicable to Sprint under the GTE Consent Decree.<sup>17</sup>

Therefore, even if efforts to prevent GTE from acquiring interexchange operations (by invoking GTE's Consent Decree) are successful in the near term, this may only be a temporary solution, since the prohibition on acquisition by GTE of interexchange carriers and interexchange assets expires in late 1994.<sup>18</sup> It is a near certainty that GTE at some point will seek to provide interexchange services, including SS7 interexchange services, through unregulated subsidiaries not subject to any structural separation requirements under the GTE Consent Decree.<sup>19</sup> GTE will then be in a unique position to cross-subsidize its own provision of enhanced services over an internal interexchange signaling network, while discriminating against competing ESPs.

GTE's relative insulation from competitive pressures is another important factor. The emergence of competitive access providers is widely acknowledged as an important constraint on anticompetitive practices by the local exchange carriers. However, because competitive access providers are almost exclusively an urban phenomenon, GTE is far less likely to be

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<sup>17</sup> Id. at 64,774.

<sup>18</sup> Id. at 64,776.

<sup>19</sup> Id. at 64,774.

subject to any competitive pressures exerted by these alternate service providers.

The fact that GTE's operations are predominately rural means that the tolerance for cross-subsidization by GTE of its enhanced service operations is far greater than a company subject to potential market entry in an urban environment. While it is true that the GTOCs are not a dominant force over a large contiguous region in the same manner as the BOCs, it is also true that their customers are less likely to be an attractive target for competitors, because of the enormous investment required to provide service to rural, dispersed customers (in contrast to highly concentrated urban customers).

Again, ITN would question the basic premise behind the assertion that the widespread nature of GTE's operations is in some manner a protection against anticompetitive or discriminatory practices. While the Commission was probably correct in its initial conclusion that the application of ONA and nondiscrimination safeguards to GTE would yield less relative benefits than application of these measures to the BOCs (because of the likelihood of greater demand by enhanced service providers in urban areas), the emerging technologies, particularly in the areas of SS7, Integrated Services digital Network ("ISDN") and Intelligent Network ("IN"), have substantially altered even this analysis, as noted above. More significantly, the ability of GTE to engage in anticompetitive or discriminatory practices is actually enhanced by (i) GTE's

total, dispersed operations, and (11) the lesser restrictions of GTE's Consent Decree.

ITN strongly supports the Commission's conclusion that the public interest benefits of bringing customers and ESPs operating in GTE's service areas the benefits of ONA justify the imposition of these safeguards.

**IV. IN LIGHT OF THE EVEN GREATER SIZE AND SCOPE OF GTE'S OPERATIONS FOLLOWING ITS ACQUISITION OF CONTEL, IT IS IMPERATIVE THAT THE COMMISSION APPLY TO GTE THE SAME ONA AND NONDISCRIMINATION SAFEGUARDS APPLICABLE TO THE BOCs.**

GTE now provides service in 40 states, and GTE's domestic telephone operations, when compared to the BOCs, rank first in number of exchanges and second in total operating revenues, total gross plant and number of employees.<sup>20</sup> ITN strongly concurs in the Commission's conclusion that the benefits of applying the ONA nondiscrimination safeguards to GTE have been enhanced considerably by virtue of the Contel acquisition. In addition, the Commission is correct in noting that the increased scope of GTE's operations and financial resources enhance not only its ability to discriminate against competitors but also its ability to comply with ONA and nondiscrimination requirements.

GTE contends that following its merger with Contel "the case is more compelling today not to require it to comply with the ONA requirements and nondiscrimination safeguards."<sup>21</sup> The argument that GTE 's addition of \$3.4 billion in total revenue,

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<sup>20</sup> See NPR at 7.

<sup>21</sup> See NPR at 9.

2.7 million in access lines, and 1,700 local exchanges make the need for ONA and nondiscrimination safeguards less compelling, collapses of its own weight. By this reasoning the Commission would be compelled to consider lifting ONA nondiscrimination requirements if, for example, BellSouth acquired GTE, since, as a result, BellSouth would be a more rural and dispersed company. It is difficult to conceive that anyone could seriously contend that the potential for discrimination and anticompetitive practices is diminished in any manner or to any degree when one large carrier acquires another large carrier.

**V. IN ITN'S VIEW THE COMMISSION SHOULD STREAMLINE IMPLEMENTATION OF ONA BY REQUIRING GTE TO SUBMIT ITS ONA JUSTIFICATION 60 DAYS BEFORE FILING ITS ONA TARIFFS.**

ITN believes that requiring GTE to submit its ONA justification 60 days before filing its ONA tariffs is more likely to result in ONA offerings which are responsive to the needs of Enhanced Service Providers. While this approach may result in some incremental delay in the offering to the public of these ONA services, this approach will also permit critical review and analysis of the GTE ONA proposals prior to their implementation and offering to the public. Experience suggests that after the filing of the ONA tariffs, the ability to effect any change in the nature of the proposed ONA services is greatly diminished. Narrowing the focus of the initial review and analysis to the character of the proposed ONA offerings will be more likely to generate ONA offerings which are of use to the enhanced service provider community.

**VI. ITN STRONGLY BELIEVES THAT THE SAME ONA REQUIREMENTS AND NONDISCRIMINATION SAFEGUARDS APPLICABLE TO THE BOCs, RATHER THAN A REDUCED OR MODIFIED SET OF REQUIREMENTS, SHOULD BE APPLIED TO GTE.**

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As the analysis and discussion above suggests, ITN strongly believes that the more geographically-dispersed nature of GTE's operations in comparison to the BOCs does not justify a reduced or modified set of safeguards. Applying these safeguards only to contiguous areas or limiting the safeguards in other ways would ignore the enhanced ability to discriminate enjoyed by GTE as a result of its rural operations. Specifically, the geographically dispersed nature of GTE's operations facilitates in many cases the provision of enhanced services, and hence the incentive and ability to discriminate, because the signaling infrastructure (i.e., the switches) for many new services must be deployed on a widely-dispersed regional and local basis.

If GTE is providing services, facilities or interconnections in a local or noncontiguous area to GTE's own enhanced services operations, then there is no justification for not requiring that these same services, facilities or interconnections be made available to other Enhanced Service Providers on equivalent terms and conditions.

**VII. ITN SUPPORTS THE COMMISSION'S PROPOSAL TO STREAMLINE IMPLEMENTATION OF NONDISCRIMINATION SAFEGUARDS BY REQUIRING GTE TO IMPLEMENT METHODS ALREADY APPROVED FOR USE BY ONE OF THE BOCs.**

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At least in the near term, ITN supports the Commission's proposal to require GTE to implement nondiscrimination

requirements in a way already improved for one of the BOCs in an ONA plan, since this should expedite the implementation of these safeguards. In ITN's view, however, this method of seeking compliance with the nondiscrimination safeguards by GTE must be reviewed and assessed carefully in the initial process of implementation to ensure that the BOCs' safeguards are rigorously implemented and that they are comprehensive enough to address the potential for discrimination across the vast range of GTE network services.

VIII. ITN WOULD EMPHASIZE TO THE COMMISSION THE IMPORTANCE OF THE COMMISSION'S DECISIONS WITH RESPECT TO THE TRANSPORT RULEMAKING AND RELATED DOCKETS IN DETERMINING WHETHER ONA IS MERELY A THEORETICAL FRAMEWORK OR A TRUE GATEWAY TO ENHANCED COMPETITION AND EXPANSION OF SERVICES IN THE ENHANCED SERVICES MARKETPLACE.

ITN believes that it is vital that the Commission address certain transport issues in order to ensure that Enhanced Service Providers have access to only those discreet transport services which are necessary in order to utilize the basic service elements which ONA should make available to all Enhanced Service Providers. In ITN's view, the Commission must be cognizant of the importance of requiring that transport elements be provided on an unbundled basis in order to ensure that enhanced service providers and others utilizing network services are not required to purchase or cross-subsidize network elements which they do not utilize.

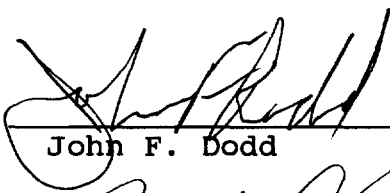
**IX. CONCLUSION.**

For the foregoing reasons, ITN respectfully submits that the Commission should apply to GTE the same ONA and nondiscrimination safeguards applicable to the BOCs. Because of GTE's enhanced ability to cross-subsidize enhanced services and discriminate against competing enhanced service providers, the implementation of these safeguards has assumed even greater importance.

Respectfully submitted,

INDEPENDENT TELECOMMUNICATIONS,  
NETWORK, INC.

By

  
John F. Dodd

By

  
Brad I. Pearson

SMITH, GILL, FISHER & BUTTS,  
a Professional Corporation  
One Kansas City Place  
1200 Main Street, 35th Floor  
Kansas City, MO 64105-2152  
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